



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 17, 2020

Richard D. Pio Roda
City Attorney
Meyers Nave
1999 Harrison Street, 9th Floor
Oakland, California 94612

Re: Your Request for Advice
Our File No. A-20-130

Dear Mr. Roda:

This letter responds to your request for advice on behalf of the City of San Leandro Budget Advisory Task Force Members Joe Camarillo, Melissa Graham, and Patrick Grajeda regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

1. Are members of the City of San Leandro Budget Advisory Task Force public officials subject to the conflict of interest provisions of the Act?
2. Do members Joe Camarillo, Melissa Graham and Patrick Grajeda have disqualifying conflicts of interest, as they are employees of the City of San Leandro?

CONCLUSION

1. No. Based on the facts provided, the Task Force members have no decisionmaking authority, such that they do not constitute public officials under the Act.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

2. The three members identified are public officials by virtue of their employment with the City and may have disqualifying conflicts of interest. However, they are not disqualified from any particular decision based on their interest in the City as a source of income for their employment.

FACTS AS PRESENTED BY REQUESTER

Your firm represents the City of San Leandro and you serve as the appointed City Attorney. The City has requested that you seek advice as to whether members of the Budget Advisory Task Force (“Task Force”) constitute public officials under the Act and are therefore subject to its conflict of interest provisions.

The Task Force is currently a temporary advisory body that was formed by formal action of the City Council on July 21, 2020. The Task Force was created to provide input and make recommendations to the City Council regarding the City’s 2021-2022 and 2022-2023 budgets (the City Council approves a two-year budget). It is comprised of 28 members who were appointed by the City Council on September 28, 2020. Task Force Members Camarillo, Graham and Grajeda are City of San Leandro employees; Members Camarillo and Graham are employees in the Police Department, and Member Grajeda is an employee of the Public Works Department.

The mission and desired outcomes of the Task Force, as defined by the City Council, are as follows:

- Develop an understanding of the City’s budget and fiscal issues.
- Provide input on community priorities and develop recommendations on programs and fiscal strategies.
- Make recommendations to enhance public understanding of the City budget and provide input into the budget development process.
- Make recommendations to re-allocate the funding deducted from the Police Department’s budget.
- Make recommendations to help achieve a long-term, sustainable budget through controlling expenditures and enhancing revenues.

Through further information provided via email, you have confirmed that the Task Force has no ability to adopt rules, rates or regulations; no ability to purchase supplies; no ability to hire, appoint, or fire personnel; no ability to hire outside consultants; and no ability to enter into contracts. Its sole work product will consist of recommendations submitted to the City Council for review and consideration. The proposed work plan has a target date of March 2021 for finalization of recommendations to the City Council and completion of the Task Force work.

You have indicated, however, that while the Task Force is currently a temporary advisory body, the City has contemplated extending the period of its existence and/or making it a permanent body.²

² As noted below, our conclusion is limited to the task force as currently comprised. If the Task Force becomes a permanent body, you may wish to seek further assistance.

Finally, out of an abundance of caution, the City has advised Task Force members that they are subject to the Act's conflict of interest provisions and therefore must file a Statement of Economic Interests (Form 700) at the highest disclosure category. Your understanding is that most, if not all, Task Force members have completed a Form 700, which are currently on file with the City Clerk.

ANALYSIS

1. Are members of the City of San Leandro Budget Advisory Task Force public officials subject to the conflict of interest provisions of the Act?

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. A "public official" includes every member, officer, employee or consultant of a state or local government agency. (Section 82048.) Regulation 18700(c)(2), however, provides an exception to the definition of public official for certain specified members of governmental agencies:

(2) "Member" does not include an individual who performs duties as part of a committee, board, commission, group, or other body that does not have decisionmaking authority.

(A) A committee, board, commission, group, or other body possesses decisionmaking authority whenever:

(i) It may make a final governmental decision;

(ii) It may compel or prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or

(iii) It makes substantive recommendations and, over an extended period of time, those recommendations have been regularly approved without significant amendment or modification by another public official or governmental agency.

(B) A committee, board, commission, group, or other body does not possess decisionmaking authority if it is formed or engaged for the sole purpose of researching a topic and preparing a report or recommendation for submission to another public official or governmental agency that has final decisionmaking authority, and does not meet any of the criteria set forth in subsection (2)(A)(i-iii).

Additionally, a public official "makes" a decision where the official authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency. (Regulation 18704(a).)

From the facts provided, the Task Force as currently comprised does not have decisionmaking authority. As a body, the Task Force has no authority to make final governmental decisions, nor compel or prevent a governmental decision. Its stated mission is to seek input from residents and stakeholders as to the relevant community priorities that should influence and guide the City's budget. The ultimate goal of the Task Force is to research and present recommendations to the City which will help to shape the budget. The Task Force does not have the authority to

authorize or approve a budget, and indeed it is unclear what form the final recommendations will even take, given that this is an entirely new body.

Because the Task Force is a body recently created for sole purpose of providing the City Council with budget recommendations, the Task Force not only has no power to pass or compel passage of its proposal, there is no "track record" to support a finding that the Task Force is a body that in reality possesses *de facto* decisionmaking authority. We must conclude, therefore, that there is no basis for a finding that the Task Force is anything other than a purely advisory body.

As the Task Force currently has no decisionmaking authority, and indeed was convened for the sole purpose of researching and providing recommendations on the budget to the City Council, its members do not constitute public officials under the Act and are not subject to its conflict of interest provisions.

If the Task Force becomes a permanent body, whether the members will then constitute public officials will depend upon the relevant powers and duties of the body at that time, and whether the recommendations of the committee are regularly approved without significant amendment or modification over an extended period of time. Likewise, should the Task Force remain a temporary body, yet obtain any decisionmaking authority as discussed above, the members of the Task Force may become public officials. You may wish to seek further advice should the Task Force become a permanent body or the duties of the Task Force change.

Local Rules

Section 87309(c) prohibits a code reviewing body from going beyond the requirements of Section 87302 and approving a conflict of interest code which designates positions that do not entail the "making or participation in the making of governmental decisions." (*In re Alperin* (1977) 3 FPPC Ops. 77; *Roth* Advice Letter, No. A-09-264.)

A government agency, however, is not prohibited from adopting requirements which go beyond those contained in the Act, including additional disclosure requirements, so long as it does so under its own authority and so long as those requirements do not prevent a person from complying with the Act. (Section 81013; *Alperin, supra.*) Thus, the Act does not prevent the City from adopting its own requirements regarding commissions and committees if the City does not base those requirements on the Act or any conflict-of-interest code adopted pursuant to the Act. However, members of the Task Force should not be included in the City's conflict-of-interest code or required to file a Statement of Economic Interest (Form 700) under the Act.

2. Do members Joe Camarillo, Melissa Graham and Patrick Grajeda have disqualifying conflicts of interest, as they are employees of the City of San Leandro?

As stated above, the Act prohibits public officials from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. You have indicated that the identified Task Force members are public officials by virtue of their City employment. Accordingly, the Act applies to the extent that they make, take part in making, or influence a governmental decision in which they have a financial interest.

In relevant part, "making, participating in making, or using his or her official position to influence a governmental decision" is defined as follows:

- *Making a Governmental Decision:* A public official "makes a governmental decision" when the official "authorizes or directs any action, votes, appoints a person, obligates or commits his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency."
- *Participating in Making a Governmental Decision:* A public official "participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review."
- *Influencing a Governmental Decision:* A public official " 'uses his or her official position to influence a governmental decision' if he or she 'contacts or appears before any official in his or her agency or in an agency subject to the authority or budgetary control of his or her agency for the purpose of affecting a decision.' A public official also 'uses his or her official position to influence a governmental decision' if he or she contacts or appears before any official in any other government agency for the purpose of affecting a decision, and the public official acts or purports to act within his or her authority or on behalf of his or her agency in making the contact." (Regulation 18704.)

Generally, the conflict of interest provisions apply to any city employee who contacts or appears before any other city official in an official capacity in an attempt to "influence" the decisions. Accordingly, the Act potentially prohibits these three members from taking part in Task Force decisions should they have a covered financial interest. Pursuant to Section 87103, economic interests under the Act include:

- Any business entity in which the public official has a direct or indirect investment worth \$ 2,000 or more. (Sections 87103(a).)
- Any real property in which the public official has a direct or indirect investment worth \$2,000 or more. (Section 87103(b).)
- Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating \$ 500 or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made. (Section 87103(c).)
- Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management. (Section 87103(d).)
- Any source of gifts aggregating to \$500 or more made to the public official during the 12 months prior to the time a decision is made. (Section 87103(e).)

- Personal finances, including those of the official's immediate family. (Section 87103.)

The definition of "income," however, excludes salary and benefits received from a state, local or federal government agency. (Section 82030(b)(2).) Therefore, the salaries from the City for members Camarillo, Graham and Grajeda are not interests from which a conflict would arise. Barring an interest as enumerated in Section 87103, the three Task Force members do not have a conflict under the Act.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "EM Boyd".

By: Erika M. Boyd
Senior Counsel, Legal Division

EMB:aja